

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.11.2009

Coram

The Hon'ble Mr. Justice K.CHANDRU

W.P.No.36609 of 2007

The Tamil Nadu State
Apex Co-op.Bank Ltd.,
rep.by its General Manager Incharge,
Mr.J.Selvaganapathy,
No.4, N.S.C.Bose Road,
Chennai-600 001 Petitioner

vs.

1.Government of Tamil Nadu,
rep.by its Chief Secretary,
Fort St. George,
Chennai-600 009.

2.Secretary to Government,
Home Department,
Fort St. George,
Chennai-600 009.

3.The Inspector of Police,
Central Crime Branch/IV,
Egmore, Chennai-600 009 Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to direct the respondents 1 and 2 to transfer the case in Cr.No.110/2005, on the file of Central Crime Branch/IV, Egmore, Chennai-600 008, to Central Bureau of Investigation for further investigation as per representation dated 4.10.2007 made by the petitioner.

For Petitioner .. Ms.S.Hemalatha

For Respondents .. Mr.R.Neelakandan,
Govt. Advocate

ORDER

The petitioner is the aided Apex Co-operative Bank registered under the Co-operative Societies Act. They have filed the present writ petition seeking for a direction to respondents 1 and 2 to transfer the case in Crime No.110 of 2005 on the file of the third respondent viz., the Inspector of Police, Central Crime Branch, Egmore, Chennai to the Central Bureau of Investigation for further

investigation as per their representation dated 04.10.2007.

2.The grievance of the petitioner was that despite there being grave irregularities committed by certain persons, against whom complaints have been given, the third respondent was not investigating the case properly and he was slack and indifferent. He has also sent a letter dated 05.02.2007 stating that the case has been referred as undetectable (UN) as there was no evidence to fix the accused in this case.

3.The petitioner earlier moved a Criminal Original Petition under Section 482 Cr.P.C in Crl.O.P.No.1812 of 2005 to set aside the order dated 11.01.2005 on the file of the second respondent therein viz., Assistant Commissioner of Police, Cyber Crime Cell, Chennai and for a direction to the respondents therein to register a case on the complaint given by the petitioner on 31.12.2004 and also to investigate the same. This Court by a final Order dated 02.02.2005, issued a direction. In fact, it is pursuant to this direction, the third respondent came to send a letter dated 05.02.2007 stating that it was undetectable. The petitioner placed reliance upon the communication sent by the Assistant Commissioner of Police, Cyber Crime Cell to the petitioner dated 11.01.2005 and his further representation dated 04.10.2007 addressed to respondents 1 and 2, demanding transfer of investigating agency.

4.On notice from this Court, the learned Government Advocate produced the final report dated 18.01.2007 filed by the third respondent before the Additional Chief Metropolitan Magistrate, Egmore, Chennai. In the report, it was stated that accused 1 to 3 could not be secured since the correct address was not given and hence the case was referred as undetected according to legal opinion. There was also further prayer to close the original first information report. Along with the final report, the referred cause notice was also enclosed. It is not clear as to why the petitioner Bank never objected to the petition filed by the third respondent before the appropriate Court when they received RC notice from them. In any event, the prayer made by the petitioner cannot be countenanced by this Court in the light of the judgment of the Supreme Court in Sakri Vasu Vs. State of Uttar Pradesh and Others (2008 (1) SCC Cri 440).

5.In para 13, the Supreme Court has held that if a report is filed by the police, it is always open to the aggrieved person to approach the Magistrate under Section 156(3) Cr.P.C. and if the Magistrate is satisfied, he can order a proper investigation and take other suitable steps to pass orders as he thinks necessary for ensuring the proper investigation. The Magistrate enjoys the powers under Section 156(3) Cr.P.C. After stating so, in paragraphs 15 to 17 and 24 it was observed as follows: "15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide State of Bihar v. J.A.C. Saldanha⁴ (SCC : AIR para 19).

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a

proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision."

6. Though in the very same case, the Supreme Court reserves the power of the High Court to order for a CBI enquiry only in rare and exceptional cases, in para 35, it was observed as follows:

"35. It has been stated in the impugned order of the High Court that GRP at Mathura had investigated the matter and gave a detailed report on 29-8-2003. It is not clear whether this report was accepted by the Magistrate or not. If the report has been accepted by the Magistrate and no appeal/revision was filed against the order of the learned Magistrate accepting the police report, then that is the end of the matter. However, if the Magistrate has not yet passed any order on the police report, he may do so in accordance with law and in the light of the observations made above."

7. If a perusal of the above observation made by the Supreme Court is taken into account, after the final report filed by the investigating officer is accepted by the Magistrate Court and there is no appeal or revision filed against the said order, then that will be the end of the matter. In the light of the same, the grievance projected by the petitioner cannot be countenanced by this court. Accordingly, the writ petition shall stand dismissed. No costs.

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To

1. The Chief Secretary to Government,
Fort St. George,
Chennai-600 009.

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